

PT 06-24

Tax Type: Property Tax

Issue: Religious Ownership/Use

**STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
CHICAGO, ILLINOIS**

**BETHEL NEW LIFE, INC.,
Applicant**

v.

**THE DEPARTMENT OF REVENUE
OF THE STATE OF ILLINOIS**

No. 05-PT-0012
(03-16-1794), (04-16-1877)
PINs 16-10-407-045, 16-10-407-046
16-10-407-025, 16-10-407-049

John E. White,
Administrative Law Judge

RECOMMENDATION FOR DISPOSITION

Appearances:

David Martin, Neal Gerber & Eisenberg, LLP, appeared for Bethel New Life, Inc.; John Alshuler, Special Assistant Attorney General, appeared for the Illinois Department of Revenue.

Synopsis:

This matter arose after Bethel New Life, Inc. (Bethel or Applicant) protested the Illinois Department of Revenue's (Department) denials of its applications for non-homestead property tax exemption for properties Bethel owned during calendar years 2003 and 2004, and which properties are situated in Cook County, Illinois. The issue is whether those properties, or portions thereof, are entitled to a charitable property tax exemption, pursuant to § 15-65 of the Property Tax Code (PTC). 35 **ILCS** 200/15-65.

The hearing was held at the Department's offices in Chicago. Bethel presented evidence consisting of books and records and other documents, as well as the testimony of applicant's chief operating officer. I have reviewed that evidence, and I am including in this recommendation findings of fact and conclusions of law. I recommend the issue

be resolved in favor of Applicant.

Findings of Fact:

1. Bethel is an Illinois not-for-profit corporation, and was incorporated in 1979. Applicant Group Ex. 1, tab 8 (*hereinafter* Applicant Ex. 1.8 and so on) (copies of documents including: Illinois Secretary of State (SOS) form showing an amendment that changed the name of Bethel Housing, Inc. to Bethel New Life, Inc.; SOS certificate and Bethel's Articles of Incorporation; Internal Revenue Service (IRS) letter to Bethel confirming Bethel's federal tax exempt status, pursuant to 26 U.S.C. § 501(c)(3)); Hearing Transcript (Tr.) p. 29 (testimony of Sophia Lloyd (Lloyd), Bethel's chief operating officer).

2. Bethel's Bylaws provide the following statement of purposes:

The purpose of the corporation is to enable community development for the restoration of its neighborhood. Since its inception, Isaiah's (Isaiah 58:9-12) vision of hope has been its guiding philosophy:

If you put an end to oppression, to every gesture of contempt, and to every evil word, if you give food to the hungry and satisfy those who are in need, then the darkness around you will turn to the brightness of noon. And I will always guide you and satisfy you with good things. I will keep you strong and well. You will be like a garden that has plenty of water, like a spring of water tha[t] never goes dry. Your people will rebuild what has long been in ruins, building again on the old foundations. You will be known as the people who rebuilt the walls, who restored the ruined houses.

In the attainment of this purpose, and while utilizing self-help and holistic principles and with a strong commitment to quality services and accountability to both church and community, the corporation shall endeavor to implement community development programs including housing, senior services, community and economic development and

health and family services. All of this leads to the development of an affordable, livable, just community on Chicago's west side.

Applicant Group Ex. 1.9 (copy of Bethel's Bylaws).

3. On March 2001, the Department issued exemption identification number E 9989-2995-04 to Bethel, after concluding that Bethel was organized and operated exclusively for charitable purposes. Applicant Group Ex. 1.14 (copy of Bethel's Illinois exemption letter). The effect of that determination is that Bethel is exempt from paying Retailers' Occupation Tax, Service Occupation Tax, Use Tax and Service Use tax. *Id.*
4. Bethel is also exempt from federal income tax pursuant to § 501(c)(3) of the Internal Revenue Code. Applicant Group Ex. 1.13 (copy of IRS determination letter).
5. Bethel filed two separate Applications for Non-Homestead Property Tax Exemptions (applications), both of which the Department denied. Department Exs. 1-2 (each exhibit including, respectively, the original Denial and the original, completed Illinois PTAX-300 forms), Applicant Group Exs. 1.1 (copy of Bethel's completed Cook County Board of Review form R.E.E. #7, Real Estate Exemption Complaint (county complaint), for 2003); 3.1 (copy of Bethel's completed county complaint for 2004).
6. The Department denied Bethel's 2003 application because it determined that the property was not in exempt use and was not in exempt ownership. Department Ex. 2, p. 1. The Department denied Bethel's 2004 application because it determined that the property was not in exempt use. Department Ex. 1, p. 1.
7. Bethel took title to all of the properties at issue prior to 2003 and 2004. Applicant

- Group Exs. 1.4-1.6 (copies of, respectively, quitclaim deed for property having the PINs of 16-10-407-045 and 16-10-407-046 (dated 12/18/2002), warranty deed for property having the PIN of 16-10-407-025 (dated 12/20/95), and tax deed for property having the PIN of 16-10-407-049 (dated 9/18/95)).
8. The properties having PINs of 16-10-407-045 and 16-10-407-046 are contiguous and are currently improved with a two-story building containing 21,210 sq. ft. of area, 10,605 sq. ft. on each floor. Applicant Group Exs. 1.10 (copy of affidavit of use, submitted with application), ¶ 7; 1.7 (copy of enlarged portion of Sidwell map of properties); 1.17 (copies of architectural drawings of building); *see also* 3.4 (Ex. 3.4 is the affidavit of use Bethel submitted with its 2004 application), ¶¶ 2, 5; 3.4.F (Ex. 4 to Ex. 3.4 is a reduced copy of the Sidwell map of all four parcels at issue); 3.4.O (copy of survey of property having PINs of 16-10-407-045 and 16-10-407-046, and nearby properties having PINs of 16-10-407-025 and 16-10-407-049); 3.4.P (duplicate of architectural drawings of building, included as part of Applicant Ex. 1.17).
 9. In 2000, Bethel hired Farr Associates, an architectural firm, to design the building subsequently built on the properties having PINs of 16-10-407-045 and 16-10-407-046. Applicant Group Exs. 1.20 (copies of cover letter and completed Standard Form Agreement Between Owner and Architect).
 10. During 2003 and 2004, the building now situated on PINs 16-10-407-045 and 16-10-407-046 was being built and developed primarily for use as the Bethel Center. Applicant Group Exs. 1.10, ¶ 7; 1.19 (copy of Standard Form Agreement Between Owner and Contractor regarding construction of building on property);

3.4.T (duplicate of *id.*).

11. The Bethel Center was planned to include, and subsequently did include: a Molade Child Development and Resource Center (the Daycare Center), which was an existing Bethel program offering day care to low income families in a State authorized Empowerment Zone community; and the Bethel Employment Center (Employment Center), which is a Bethel program offering employment opportunity services to the same Empowerment Zone community. Applicant Group Exs. 1.10, ¶ 7; 1.19; 3.4.T; *see also* Applicant Group Exs. 1.21 (copy of cover letter and Empowerment Zone Grant Agreement Between the City of Chicago and Bethel New Life, Inc. regarding construction at 4000-4006 West Lake Street, Chicago); 1.22 (copy of cover letters and Department Illinois of Commerce and Community Affairs Notice of Grant Award No. 02-120124 to Bethel regarding construction of the building on the property); 3.4, ¶¶ 7-23; 7 (copy of brochure describing the services at the Employment Center).
12. The Bethel Center was completed and began occupancy in April 2005. Applicant Ex. 3.4, ¶¶ 7, 23. During 2003 and 2004, the building had no occupancy by the Daycare Center, the Employment Center, or by third parties. Applicant Exs. 3.4, ¶¶ 7-23; 6 (Supplemental Affidavit of Use).
13. By the date of hearing, the Daycare Center took up 8,010 sq. ft. in portions of the first and second floors of the building, or 38% of the total building area. Applicant Group Exs. 1.10, ¶ 7; 1.17; 3.4.P; Tr. pp. 31-34 (Lloyd). By the same time, the Employment Center took up 5,280 sq. ft. of the second floor, or 25% of the total building area. Applicant Group Exs. 1.10, ¶ 7; 1.17; 3.4.P; Tr. pp. 31-34 (Lloyd).

14. Applicant leases, for profit, portions of the first floor of the Bethel Center, which portions amount to 37% of the total building area. Applicant Group Exs. 1.10, ¶ 7; 1.17; 3.4.P; Tr. pp. 43-44, 50-52 (Lloyd). During 2003 and 2004, Applicant was preparing and developing part of the first floor of the building to lease to commercial users for profit. *See* Applicant Group Exs. 1.10, ¶ 7; 1.17; 3.4.P.
15. Because it leases 37% of the building area for profit, and because it was, during the years at issue, preparing that portion of the property to lease to others for profit, Applicant seeks exemption only for the 63% of the building that it was in the process of preparing and developing for use as a Daycare Center and Employment Center. *See* Applicant Exs. 1.3 (Brief of Applicant), p. 2; 3.3 (Brief of Applicant), p. 2.
16. On the face of its 2003 county and state exemption complaint/application forms, Bethel did not specifically list the PIN of 16-10-407-045. Applicant Group Ex. 3.4, ¶ 5. However, documents attached to and/or submitted by Bethel to support those forms reflected that the building regarding which Bethel sought a partial exemption for 2003 was to be built, partially, on PIN 16-10-407-045. Department Ex. 2, p. 2 (Part 1, line 8, referring to attached deeds); Applicant Group Ex. 1.4 (quitclaim deed to both PIN 16-10-407-045 and 16-10-407-046).
17. The State of Illinois and the City of Chicago financed, in part, the construction of the Bethel Center. Applicant Ex. 1.10, ¶ 8; 1.21-1.22; 3.4.R-3.4.S; 3.4.U.
18. Childcare services provided by Bethel at the Bethel Center's Daycare Center are funded, in part, by a combination of federal, state and city agencies. Applicant Group Exs. 1.21; 1.22; Applicant Ex. 6, ¶ 5.

19. Before it began operating at the Bethel Center, Bethel had previously operated Daycare Center operations at another address. Applicant Group Exs. 1.10, ¶ 7; 1.15 (copy of brochure for Bethel's Daycare program conducted at 1120 N. Lamon); 3.4.G (copy of agency decision in Docket no. 92-16-1603).
20. In a Department decision entered following a contested case hearing in Docket no. 92-16-1603, regarding Bethel's application for a property tax exemption for a different property on which it began operating its Daycare Center, the Department determined that Bethel was an exclusively charitable organization, and that Bethel's operation of a Daycare Center at another location constituted an exclusively charitable use of that property. Applicant Group Ex. 3.4.G.
21. Bethel's Daycare Center is licensed, *inter alia*, by the Illinois Department of Children and Family Services (IDCFS). Applicant Group Ex. 1.15; *see also* 20 **ILCS** 505/5.15; 89 Ill. Admin. Code §§ 407.40 to 407.400 (IDCFS regulations regarding "Licensing Standards For Day Care Centers").
22. All of the families with children enrolled in Bethel's Daycare Center receive subsidies to pay the cost for childcare services. Applicant Exs. 5 (copy of Illinois Department of Human Services publication titled, "IL444-3455B (revised 4-2004)", which sets forth a family's co-payment for subsidized childcare services provided at an Illinois daycare center); 6, ¶ 5. The amount of the subsidy is based on a government imposed formula that is based on one's ability to pay. Applicant Ex. 5.
23. After the years at issue, but shortly after the Bethel Center opened and began operating, Bethel's board of directors resolved as follows:

WHEREAS, the Illinois Department of Revenue has requested as a condition to the area of the Bethel Center occupied by the Childcare Center qualifying for a property tax exemption under 35 ILCS 200/15-65 that Bethel express its policies regarding waiver of fees and enrollment termination from the Childcare Center due to non-payment of fees;

NOW, THEREFORE, BE IT RESOLVED, that, notwithstanding any enrollment agreement to the contrary, it shall be Bethel's policy in owning, managing, and operating the Childcare Center at the Subject Property, not to remove from the Childcare Center enrollment any family without income, welfare or other government assistance, solely for non-payment of fees or other charges due under the enrollment agreement, or in connection with the operation of the Childcare Center, if such non-payment is due to said family's documented financial inability to pay said fees or other charges. This provision shall not be construed to prohibit Bethel from removing enrolled families from Childcare Center enrollment for, among other things, failure to pay rent for reasons other than their financial ability to pay fees.

It shall be Bethel's policy in owning, managing, and operating the Childcare Center not to impose fees associated with accepting and processing applications, screening applicants, or verifying income eligibility of any applicant, and not to impose other fees on an applicant without income, welfare or other governmental assistance, if said applicant has a documented financial inability to pay said fee.

- Applicant Ex. 4 (copy of certificate of Bethel's corporate resolution, issued following Bethel's September 2005 Board meeting).
24. Bethel's Employment Center is designed to serve the needs of residents of the West Garfield neighborhood of Chicago with resources necessary to find and maintain employment. Applicant Group Ex. 1.23 (copy of cover letters and Memorandum of Agreement between Bethel and Local Initiatives Support

- Corporation (LISC), regarding a LISC grant given to Bethel to provide funding for its Employment Center operations); 1.24 (copies of letters and Grant Reporting Requirements regarding a grant from The Lloyd A. Fry Foundation to fund Bethel's Welcome Home program, which provided, *inter alia*, employment counseling to formerly incarcerated individuals).
25. Bethel's Employment Center offers services including: pre-screening; pre-employment training; skill training; placement; case management; career counseling; and retention services. Applicant Ex. 7 (copy of Bethel's Employment & Training brochure, describing center's services).
 26. Bethel does not charge fees to individuals seeking assistance at its Employment Center. Applicant Group Exs. 1.24; 7.
 27. The properties having PINs of 16-10-407-025 and 16-10-407-049 are contiguous. Applicant Group Exs. 1.17; 2.D (duplicate of Applicant Ex. 1.17, pp. 1-2); 3.4.L (duplicate of *id.*). Together, those contiguous properties contain 14,375 sq. ft. of land that, during 2003 and 2004, was being developed for use as a playground for the Daycare Center and a parking area for use only by those using the Daycare Center and Employment Center. Applicant Group Exs. 1.10, ¶ 8; 1.17; 2.D; 3.4.L.
 28. The play lot and parking lot were completed contemporaneously with the completion of the Bethel Center. *See* Applicant Group Ex. 3.4, ¶ 23.
 29. Once completed, Bethel limited access to the parking lot on the properties at issue to only those persons using, or working or volunteering at Bethel's Daycare and Employment Centers. Tr. pp. 51-52 (Lloyd).

Conclusions of Law:

Article IX of the 1970 Illinois Constitution generally subjects all real property to taxation. Eden Retirement Center, Inc. v. Department of Revenue, 213 Ill. 2d 273, 285, 821 N.E.2d 240, 247 (2004). Article IX, § 6 permits the legislature to exempt certain property from taxation based on ownership and/or use. Ill. Const. Art. IX, § 6 (1970). One class of property that the legislature may exempt from taxation is property used exclusively for charitable purposes. Ill. Const. Art. IX, § 6 (1970); Eden, 213 Ill. 2d at 286-87, 821 N.E.2d at 248. When considering whether property is exempt pursuant to PTC § 15-65, an applicant must establish that it satisfies both the statutory requirements as well as the Illinois constitutional requirements, which the Illinois Supreme Court has previously described in Methodist Old Peoples Home v. Korzen, 39 Ill. 2d 149, 155, 233 N.E.2d 537, 540 (1968). Eden, 213 Ill. 2d at 290, 821 N.E.2d at 250.

Section 15-65 of the PTC provides, in relevant part:

§ 15-65 Charitable purposes. All property of the following is exempt when actually and exclusively used for charitable or beneficent purposes, and not leased or otherwise used with a view to profit:

(a) Institutions of public charity.

35 ILCS 200/15-65(a).

For 2003, the Department denied Bethel's exemption application after determining that the properties were not in exempt use and that they were not in exempt ownership. Department Ex. 2, p. 1. For 2004, the Department denied Bethel's application after determining that the properties were not in exempt use. Department Ex. 1, p. 1. The written deeds admitted as evidence all bear markings showing that they were recorded. Applicant Group Exs. 1.4-1.6. A recorded deed raises a presumption that it is

valid and effective. In re Estate of Cuneo, 334 Ill. App. 3d 594, 598, 780 N.E.2d 325, 328 (2d Dist. 2002). Thus, the recorded deeds establish that: (1) Bethel became the owner of PINs 16-10-407-045 and 16-10-407-046 via quitclaim deed on 12/18/2002 (Applicant Group Ex. 1.4); (2) Bethel became the owner of PIN 16-10-407-025 via warranty deed on 12/20/95 (Applicant Group Ex. 1.5); and that (3) Bethel became the owner of PIN 16-10-407-049 via tax deed on 9/18/93 (Applicant Group Ex. 1.6). The Department offered no evidence to rebut the presumption of validity of the deeds introduced as evidence here. In re Estate of Cuneo, 334 Ill. App. 3d at 598, 780 N.E.2d at 328 (“In order to rebut the presumption of validity, the party challenging the deed’s validity must present clear and convincing evidence that the deed is not valid.”). Thus, I conclude that Bethel owned all of the properties during all of 2003.

I move now to whether the properties were in exempt use during 2003 and 2004. I begin by acknowledging that the Applicant does not seek an exemption for those portions of the building situated on PINs 16-10-407-045 and 16-10-407-046 that it leases to others for profit. Applicant Exs. 1.3, p. 2; 3.3, p. 2. In other words, the issues include whether Bethel’s use of 63% of the building area as its Daycare Center and Employment Center constitutes an exclusively charitable use of that property, and whether its use of the remaining property as a playground for its Daycare Center, and as a parking lot for its Daycare and Employment Centers, constitutes an exclusively charitable use of that property.

When considering whether property owned by an institution of public charity is exempt pursuant to § 15-65 of the PTC, Illinois courts and the Department follow the

guidelines announced by the Illinois Supreme Court in Methodist Old Peoples Home, 39 Ill. 2d 149, 233 N.E.2d 537. Those guidelines ask whether:

- (1) the organization benefits an indefinite number of people for their general welfare or by reducing the burdens on government;
- (2) the organization has any capital, capital stock, or shareholders earning profits or dividends;
- (3) the organization derives its funds primarily through private and public donation and expends these funds for the purposes expressed in its charter;
- (4) the organization dispenses its benefits to all those who need and apply for them;
- (5) the organization offers profit or gain in a private sense to any individual connected with it;
- (6) the organization places obstacles in the way of those seeking its benefits; and
- (7) the property is used primarily for charitable purposes.

See Methodist Old Peoples Home, 39 Ill. 2d at 156-57, 233 N.E.2d at 542.

Arguments and Analysis

The Department does not claim that Bethel fails to satisfy any particular Methodist Old Peoples Home guideline. In fact, the whole of the Department's closing argument is as follows: "Well, the Department simply asks that the criteria set out in Methodist Old People's Home be applied to this case vigorously. And we know that you will, of course, do that. So that — as long as that that's done, we'll be satisfied." Since the Department does not identify any particular guideline that Bethel fails to satisfy, I review the evidence to confirm that Bethel has offered documentary evidence regarding each of the applicable guidelines, and that such evidence is sufficient to shoulder Bethel's burden in this exemption case. Arts Club of Chicago v. Department of Revenue, 334 Ill. App. 3d 235, 242, 777 N.E.2d 700, 706 (1st Dist. 2002) ("The taxpayer claiming the exemption is required to prove clearly and convincingly that the property in question

comes within the terms of the exemption.”).

I initially note that the Department has already determined, in 2001, that Bethel is organized and operated as an exclusively charitable organization. Applicant Group Ex. 1.14. I further note that the Department has also concluded, in a prior hearing regarding prior tax years, that Bethel’s Daycare Center’s operations qualified for § 15-65’s charitable exemption. Applicant Group Ex. 3.4.G. Both of those prior determinations constitute evidence that is relevant to the issues presented here, but that evidence is not determinative “[b]ecause a cause of action for taxes for one year is not identical to a cause of action for taxes in subsequent years” Jackson Park Yacht Club v. Illinois Department of Local Government Affairs, 93 Ill. App. 3d 542, 546, 417 N.E.2d 1039, 1042 (1st Dist. 1981) (“a decision adjudicating tax status for a particular year is not res judicata as to the status of the property in later years.”).

Bethel also introduced documentary evidence relevant to each of the Methodist Old Peoples Home guidelines. Specifically, it offered documentary evidence to show that it is organized and operated so as to benefit an indefinite number of people, for their general welfare. Applicant Group Exs. 1.8 – 1.9; 1.15; 1.23 – 1.24. It offered documentary evidence sufficient to show that it has no capital, capital stock, or shareholders earning profits or dividends. Applicant Group Exs. 1.8 – 1.9. Bethel offered detailed, audited, financial statements for both years at issue, showing that it derives its funds primarily through private and public donation, and that it expends these funds for the purposes expressed in its charter. Applicant Group Exs. 1.16 (copy of Bethel’s audited financial statements regarding 2002 and 2003); 3.4.Y (copy of Bethel’s audited financial statements regarding 2003 and 2004). The same documents show that Bethel

does not provide profit or gain in a private sense to any individual connected with it. Applicant Group Exs. 1.16; 3.4.Y. Taken together with the documentary evidence describing the actual operations of the Daycare and Employment Centers (once they began), Bethel's financial books and records also establish that Bethel dispenses its benefits to all those who need and apply for them, and that it does not place obstacles in the way of those seeking its benefits. Applicant Group Exs. 1.8 – 1.9; 1.16; 3.4.Y; 4. Based on my review of the documentary evidence admitted at hearing, I agree that Bethel has established that, during 2003 and 2004, it was actually developing and preparing 63% of the building subsequently completed on the properties having PINs 16-10-407-045 and 16-10-407-046 for use primarily, and therefore, exclusively, for charitable purposes.

I move now to the evidence offered regarding Bethel's use, during 2003 and 2004, of property having the PINs of 16-10-407-025 and 16-10-407-049. Applicant Group Ex. 1.12 (photos of properties during construction); 1.17, p. 2; 1.20, p. 25 (Ex. A to the AIA Standard Form Agreement between Bethel and Farr Architects is a architectural drawing of the Bethel Center and adjacent playlot and parking area); Tr. pp. 51-52 (Lloyd). As to the playground, I take notice that the applicable IDCFS regulations require licensed daycare centers, unless exempted, to have an outdoor play area for use by children. 89 Ill. Admin. Code § 407.90(a). Thus, the playground is a necessary adjunct to Bethel's exclusively charitable use of its property as a Daycare Center.

Further, PTC § 15-125 provides, in pertinent part:

§ 15-125. Parking areas.

(a) Parking areas, not leased or used for profit other than those lease or rental agreements subject to subsection (b) of this Section, when used as a part of a use for which an exemption is provided by this Code and owned by any school district, non-profit hospital, school, or religious or

charitable institution which meets the qualifications for exemption, are exempt.

35 ILCS 200/15-125(a). Here, Bethel offered evidence showing that, after the parking lot was completed, its use was limited to persons using, working, or volunteering at the adjacent Bethel Center's Daycare or Employment Centers, and was not used in a way that provided a benefit to the persons using or working at the commercial businesses located at the Bethel Center. Applicant Ex. 7; Tr. pp. 51-52 (Lloyd).

Based on my review of the evidence admitted regarding the parcels having PINs of 16-10-407-025 and 16-10-407-049, I conclude that, during 2003 and 2004, Bethel was preparing and developing those properties for subsequent, actual use by Bethel as a playground for children attending its Daycare Center, and as a parking lot for use by the persons using, working or volunteering at Bethel's Daycare and Employment Centers. Therefore, I recommend that the Director grant an exemption for all of the parcels having PINs of 16-10-407-025 and 16-10-407-049 for 2003 and 2004.

Conclusion:

I recommend that the Director grant Applicant's request for a charitable exemption for 63% of the building, and for a proportional amount of the land situated on the properties having PINs of 16-10-407-045 and 16-10-407-046, for 2003 and 2004. I recommend that the remaining 37% of the building area, and a proportional amount of the land situated thereon, remain on the tax rolls for 2003 and 2004. I further recommend that the Director grant Applicant's request for a charitable exemption for all of the property having the PINs of 16-10-407-025 and 16-10-407-049 for 2003 and 2004.

Date: 6/30/2006

John E. White,
Administrative Law Judge